APPENDIX A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

HAROLD DORNBOS and BEVERLY DORNBOS, Individually and d/b/a H. J. DORNBOS & BROS., a Co-Partnership,
Plaintiffs,
vs.

OPINION
File No. 615

THE KROGER COMPANY; ROOKS TRANSFER LINES, INC.; ADKINS TRANSFER COMPANY, INC.; ADKINS CARGO EXPRESS, INC.; and TENNESSEE CARTAGE COMPANY, INC.,
Defendants.

Defendant Adkins Transfer Company, Inc., Adkins Cargo Express, Inc., and Tennessee Cartage Company, Inc., move the court, pursuant to GCR 116, to quash service of process and dismiss the complaint for lack of jurisdiction. Their motions challenge the application and constitutionality of Michigan's "Long-Arm" statute, being Chapter 7 of the Revised Judicature Act (Stat. Ann. Sec. 27A. 701 et seq).

The complaint alleges that plaintiff shipped a quantity of smoked fish F.O.B. to defendant Kroger in Tennessee, that defendant Rooks picked them up in Michigan and carried them to Chicago where defendant Adkins picked them up and carried them to Tennessee where defendant Tennessee Cartage Company, Inc., picked them up and delivered them to Kroger. Alleging negligence in handling their product so that the fish became the cause of death when eaten with consequential adverse publicity for plaintiff and proximately resulting damages, this action is brought in Ottawa

County, Michigan, residence of plaintiff, against all the defendants. Service against the moving defendants was had in Tennessee.

MSA 27A.715(2) provides as follows:

> "The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:
>
> (2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort."

Note must be taken that this section of the Judicature Act is carefully circumscribed and limited to acts outside the State which have consequences inside the State. Former restricted concepts of jurisdiction over non-resident foreign corporations have been expanded by the case of International Shoe Company vs. State of Washington, 326 U.S. 310 (1945) where it was stated:

> "Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. . . . . .

> It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit and those which do not, cannot be simply mechanical or quantitative. The test is not whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or little less. Whether due process is satisfied must depend rather upon the *quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.* That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations."

The court directs its attention to the "quality and nature" of the activity of these defendants as it relates to the State of Michigan. These defendants are in the business of carrying goods in interstate commerce. It is reasonable to assume that they solicit and hopefully anticipate such business. They are in the position of being able to protect themselves from the consequences of their own derelictions. They understand that the nature of their business requires them to have the care and custody of the products and possessions of residents of other states. It is foreseeable that their negligent handling of these products and possessions may have tortious consequences in other states.

It is no defense to claim that these defendants did not come into the State of Michigan to solicit this business when the very nature of their business and their franchise is such that they are required to carry goods solicited by others with whom they have a business relationship and who have a direct relationship with the forum state. Without delving into the agency concepts that may be present here, suffice it to state that the very nature of the business of these defendants creates the necessary minimum contacts with those states which produce the products that enter interstate commerce. This court is unable to

see any difference in this situation from the case of Gray vs. American Radiator & Standard Sanitary Corporation, 176 N.E. 2nd 761 (Ill. 1961). In Gray we have a negligently manufactured component which reaches the State of Illinois, while in the case before this court we have the claim of a negligently performed service with tortious consequences in either event.

The court's thinking is guided by McGee vs. International Life Insurance Company, 355 U.S. 220 (1957) wherein it is stated:

> ". . . . In a continuing process of evolution this Court accepted and then abandoned 'consent', 'doing business', and 'presence' as the standard for measuring the extent of state judicial power over such corporations. . . . ."

The court rejects any argument that such a result will be an undue burden on interstate commerce or will offend, "traditional notions of fair play and substantial justice". The realities of modern commercial transactions dictate that modern concepts of jurisdiction be considered for the purpose of enlightened handling of disputes arising from modern conditions and transactions. Shall we hold that there can only be fair play and substantial justice where the law provides that all those who do business with these defendants must go to those states wherein they are doing business for adjudication of their grievances rather than to hold that the forum of justice may be that state where tortious consequences occur? To ask the question is to answer it. The court finds nothing offensive to the concept of fair play and justice in holding that the claimant may resort to the forum where the consequences of an act occurs.

The motions to dismiss are denied.

Dated: September 12, 1966.

(s) Raymond L. Smith
Circuit Judge

APPENDIX B

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STATE OF MICHIGAN
COURT OF APPEALS
DIVISION 3

HAROLD DORNBOS and BEVERLY DORNBOS, individually and d/b/a H. J. DORNBOS & BROS., a copartnership,
Plaintiffs-Appellees,
v.
No. 2984

THE KROGER COMPANY and ROOKS TRANSFER LINES, INC.,
Defendants,

and

ADKINS TRANSFER COMPANY, INC.; ADKINS CARGO EXPRESS, INC. and TENNESSEE CARTAGE COMPANY, INC.,
Defendants-Appellants.

BEFORE: Fitzgerald, P.J., Burns and Holbrook, J.J.

BURNS, J.

Defendants-appellants on leave granted by this Court appeal an order of the Ottawa circuit court denying their motion to dismiss plaintiffs' complaint for lack of jurisdiction.

Plaintiffs are residents of Ottawa county, Michigan, doing business in the city of Grand Haven as H. J. Dornbos & Bros., a copartnership. Defendant Kroger Company is a corporation organized under the laws of Ohio and doing business in the state of Michigan. Defendant Rooks

Transfer Lines, Inc., is a corporation organized under the laws of Michigan with its principal office in the city of Holland, county of Ottawa, state of Michigan. Defendant Adkins Transfer Company is a corporation organized under the laws of the state of Indiana and is a common carrier in interstate and intrastate commerce with terminals in Chicago, Illinois, and Nashville, Tennessee. Defendant Adkins Cargo Express is a corporation organized under the laws of the state of Indiana and is a successor to the Adkins Transfer Company. Defendant Tennessee Cartage Company is a corporation organized and existing under the laws of the state of Tennessee and is a common carrier in the state of Tennessee.

Plaintiff alleged in their complaint that in September, 1963, plaintiffs were engaged in the business of processing and selling fish products. They received an order from the Kroger Company from its Nashville, Tennessee office for smoked fish, f.o.b. Grand Haven. The fish were sealed in vacuum packages marked, "Keep under refrigeration." On September 19, 1963, the fish were picked up by Rooks and transferred to Adkins at Chicago, Illinois, which, in turn, transported the fish to Nashville, Tennessee. In Nashville the fish were turned over to Tennessee Cartage which delivered the fish to the Kroger warehouse on September 25, 1963.

Plaintiffs further alleged that due to negligence in the handling of the product the fish became contaminated and caused death when eaten, with consequential adverse publicity for plaintiffs and the resulting damages for which the action was brought in Ottawa county, Michigan.

Defendants Adkins Transfer Company, Adkins Cargo Express and Tennessee Cartage Company moved the circuit court to quash service of process and dismiss the complaint for lack of jurisdiction, as the moving parties were served with process in the state of Tennessee. The motions challenged the application and the constitutionality of Michigan's "long arm" statute, the revised judicature act, PA 1961, No. 236, CLS 1961, § 600.715 (Stat Ann 1962 Rev § 27A.715). The circuit judge denied the motion to dismiss the complaint.

The defendants claim the circuit court erred in that its decision:

1) violated the due process law requirement of the 14th amendment of the United States Constitution;

2) places an undue burden on interstate commerce.

CLS 1961, § 600.715 (Stat Ann 1962 Rev § 27A.715) provides as follows:

> "The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships: * * *
>
> "(2) The doing or causing any act to be done, or consequences to occur, in the state resulting in an action for tort."

The trial judge in a written opinion which we adopt stated in part:

> "Note must be taken that this section of the judicature act is carefully circumscribed and limited to acts outside the state which have consequences inside the state. Former restricted concepts of jurisdiction over nonresident foreign corporations have been expanded by the case of *International Shoe Company v. State of Washington* (1945), 326 US 310, 316, 319 (66 S Ct 154, 90 L ed 95, 161 ALR 1057) where it was stated:
>
> " 'Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. * * * But now that the capias ad respon-

dendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." * * *

" 'It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or little less. * * * Whether due process is satisfied must depend rather upon the *quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.* That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.' (Emphasis supplied by circuit judge.)

"The court directs its attention to the 'quality and nature' of the activity of these defendants as it relates to the state of Michigan. These defendants are in the business of carrying goods in interstate commerce. It is reasonable to assume that they solicit and hopefully anticipate such business. They are in the position of being able to protect themselves from the consequences of their own derelictions. They understand that the nature of their business requires them to have the care and custody of the products and possessions of residents of other states. It is forseeable that their negligent handling of these products and possessions may have tortious consequences in other states.

"It is no defense to claim that these defendants did not come into the state of Michigan to solicit this business when the very nature of their business and their franchise is such that they are required to carry goods solicited by others with whom they have a business relationship and who have a direct relationship with the forum state. Without delving into the agency concepts that may be present here, suffice it to state that the very nature of the business of these defendants creates the necessary minimum contacts with those states which produce the products that enter interstate commerce. This court is unable to see any difference in this situation from the case of *Gray v. American Radiator & Standard Sanitary Corporation* (1961), 22 Ill 2d 432 (176 NE 2d 761). In *Gray* we have a negligently manufactured component which reaches the state of Illinois, while in the case before this court we have the claim of a negligently performed service with tortious consequences in either event.

"The court's thinking is guided by *McGee v. International Life Insurance Company* (1957), 355 US 220, 222 (78 S Ct 199, 2 L ed 2d 223) wherein it is stated:

" 'In a continuing process of evalution this Court accepted and then abandoned "consent", "doing business", and "presence" as the standard for measuring the extent of state judicial power over such corporations.'

"The court rejects any argument that such a result will be an undue burden on interstate commerce or will offend, 'traditional notions of fair play and substantial justice'. The realities of modern commercial transactions dictate that modern concepts of jurisdiction be considered for the purpose of enlightened handling of disputes arising from modern conditions and transactions. Shall we hold that there can only be fair play and substantial justice where the law provides that all those who do business with these defendants must go to those states wherein

> they are doing business for adjudication of their grievances rather than to hold that the forum of justice may be that state where tortious consequences occur? To ask the question is to answer it. The court finds nothing offensive to the concept of fair play and justice in holding that the claimant may resort to the forum where the consequences of an act occur."

This Court is aware of the decision by our Supreme Court in *Hershel Radio Co. v. Pennsylvania R. Co.* (1952), 334 Mich 148. However, that case was decided prior to the revised judicature act. To follow that holding in the present case this Court would have to declare this section of the act invalid as to interstate carriers. This we decline to do. Statutes are presumed to be constitutional.

Judgment affirmed. Costs to appellees.

APPENDIX C

(Supreme Court Number 52062)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of August in the year of our Lord one thousand nine hundred and sixty-eight.

Present the Honorable

John R. Dethmers,
Chief Justice,
Harry F. Kelly,
Eugene F. Black,
Thomas M. Kavanagh,
Michael D. O'Hara,
Paul L. Adams,
Thomas E. Brennan,
Associate Justices.

On order of the Court, the application by defendants and appellants for leave to appeal is considered, and the same is hereby DENIED, without prejudice, for the reason that it does not present a meritorious question for review at this before-trial stage of the cause.

Adams, J., not participating.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of August in the year of our Lord one thousand nine hundred and sixty-eight.

(SEAL)

(s) Donald F. Winters,
Clerk.

APPENDIX D

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 30th day of October in the year of our Lord one thousand nine hundred and sixty-eight.

Present the Honorable

John R. Dethmers,
Chief Justice,

Harry F. Kelly,
Eugene F. Black,
Thomas M. Kavanagh,
Michael D. O'Hara,
Paul L. Adams,
Thomas E. Brennan,
Associate Justices.

On order of the Court, the motion by defendants and appellants for reconsideration of their application for leave to appeal is considererd, and the same is hereby DENIED.

STATE OF MICHIGAN—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 30th day of October in the year of our Lord one thousand nine hundred and sixty-eight.

(SEAL)

(s) Harold Hoag
Deputy Clerk.